

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No.4598 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE M.R.SHAH Sd/-

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

MOHMMEDARIF ZAHURMOHMED SHAIKH

Versus

AHMEDABAD MUNICIPAL CORPORATION

Appearance:

1. Special Civil Application No. 4598 of 2003
MR KM PATEL for Petitioner No. 1
MR MK VAKHARIA for Respondent Nos. 1-2
NOTICE SERVED for Respondent No.3

CORAM : HON'BLE MR.JUSTICE M.R.SHAH

Date of decision: 19/07/2004

ORAL JUDGEMENT

1. At the request of the learned advocate appearing

on behalf of the petitioner, respondent No.3 stand deleted.

2. RULE. Mr.Vakharia, learned advocate, waives service of rule on behalf of respondent Nos.1 and 2. With the consent of the parties, the matter is taken up for final hearing today.

3. What is challenged in the present petition under Article 226 of the Constitution of India is the order dated 06-03-2003 passed by the respondent Corporation whereby cancelling the development permission/Raja Chithhi dated 19-11-2002 granted to the petitioner.

4. Mr.K.M.Patel, learned advocate appearing on behalf of the petitioner, submitted that before passing the impugned order dated 06-03-2003, no opportunity of hearing was given to the petitioner and without issuing show-cause notice, the order dated 06-03-2003 came to be passed.

5. In response to the notice issued by this Court, an affidavit-in-reply on behalf of respondent Nos.1 and 2 was filed. Mr.Vakharia, learned advocate appearing on behalf of respondent Nos.1 and 2, submitted that in fact various letters were written by the Corporation to the petitioner with regard to suspension of license of the engineer who has produced the plans while getting the development permission/Raja Chithhi. However, the petitioner could not be served as he was not found and, therefore, he has submitted that ample opportunity was given to the petitioner but he did not remain present.

6. Heard the learned advocates appearing for the respective parties.

7. It is found that before passing the impugned order the petitioner was not served with any show-cause notice by the respondent - Corporation. It is stated in the affidavit-in-reply that they have tried to serve a copy of the notice to the petitioner, but it could not be served upon the petitioner. However, the facts remain that before passing the order dated 06-03-2003 the petitioner was not heard. Under the circumstances, as the impugned order dated 06-03-2003 is against the principles of natural justice and without hearing the petitioner, the same is required to be quashed and set aside on that ground alone.

8. In view of the above, order dated 06-03-2003 cancelling the development permission/Raja Chithhi dated 19-11-2002 is hereby quashed and set aside only on the ground that the petitioner was not heard before passing the impugned order. It will be open for the respondents to serve a show-cause notice to the petitioner to show cause why the development permission/Raja Chithhi of the petitioner dated 19-11-2002 should not be cancelled and the respondent may serve the notice at the address which is given in the cause title of the present petition, the same will be treated as proper service.

The petition stands allowed accordingly. Rule made absolute to the aforesaid extent. Sd/-

[M.R.SHAH, J]

* * *

'Bhavesh'